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No. _____

IN THE

Supreme Court of the United States

October Term, 1984

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA,
Petitioner,

v.

THE SANSOM COMMITTEE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

I. Whether, consistent with the opinions of this Court in *United Mine Workers v. Gibbs* and *Aldinger v. Howard*, a District Court may, by entry of a consent decree, obtain ongoing jurisdiction over a party as to whom no independent basis for subject matter jurisdiction exists.

II. Whether federal courts may, consistent with Article III of the Constitution, exercise jurisdiction over disputes between a party properly before the court and a "pendent party" in the absence of an independent basis for federal jurisdiction.

III. Whether any limits exist on the power of a federal court to exercise jurisdiction, by means of a consent decree, over exclusively state law disputes between citizens of that same state.

PARTIES

The litigants before the Court of Appeals for the Third Circuit were the Sansom Committee, which was the plaintiff in the District Court and the appellee in the Court of Appeals, and The Trustees of the University of Pennsylvania, which was not a party (plaintiff or defendant) to the original litigation but which became a "party" to the Consent Decree entered by the District Court and which was the appellant in the Court of Appeals. Counsel for the Redevelopment Authority of the City of Philadelphia, a defendant in the District Court, entered an appearance but did not participate in the proceedings before the Court of Appeals.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The petitioner, The Trustees of the University of Pennsylvania, respectfully prays that a writ of certiorari issue to review the judgments and opinions of the United States Court of Appeals for the Third Circuit entered in three appeals in this proceeding on June 1, 1984.

OPINIONS BELOW

Three appeals were taken from orders in the District Court. The three opinions of the Court of Appeals, not yet reported, appear in the Appendix hereto. No opinion on the questions presented in this petition was rendered by the District Court for the Eastern District of Pennsylvania.

JURISDICTION

The judgment of the Court of Appeals for the Third Circuit was entered on June 1, 1984. A timely petition for rehearing *en banc* was denied on July 6, 1984, and this petition for a writ of certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article III, Section 2:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign states, Citizens or Subjects. . . .

United States Code, Title 28:

§1331. Federal question

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§1361. Action to compel an officer of the United States to perform his duty

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

United States Code, Title 42:

National Environmental Policy Act of 1969, 42 U.S.C. §4332(c): set forth in Appendix hereto.

National Housing Act of 1949, 42 U.S.C. §1441, *et seq.*: pertinent sections set forth in Appendix hereto.

STATEMENT OF THE CASE

The litigation from which this Petition for a Writ of Certiorari arises began with the filing of a complaint in June, 1973, by The Sansom Committee, an unincorporated group of residents and users of the 3400 block of Sansom Street in Philadelphia, Pennsylvania. [A-3].[1] These plaintiffs, opposed to the proposed demolition of the block contemplated by the then-existing redevelopment plan, challenged the plan by alleging violations of the National Housing Act of 1949 ("NHA"), 42 U.S.C. §1441 *et seq*., and §102(c) of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §4332(c). [A-4].

The only defendants in the suit were the Redevelopment Authority of the City of Philadelphia ("RDA") and the United States Department of Housing and Urban Development ("HUD"). [A-3 to A-4]. These defendants were charged with failing to issue an environmental impact statement, failing to provide public participation in the redevelopment plans, failing to hold public hearings, failing to seek approval of local governing bodies, failing to insure conformity with community and regional plans, permitting acceptance of non-public contributions, failing to provide adequate relocation, and failing to preserve rehabilitable structures.[2] [A-7]. The District Court found that it had jurisdiction over these claims under Sections 1331 and 1361 of Title 28 of the United States Code. *The Sansom Committee v. Lynn*, 366 F. Supp. 1271, 1278-80 (E.D. Pa. 1973).

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1. Citations to the Appendix appear in the form "A-" followed by the page number. Most references to the Appendix refer to the opinion in appeal No. 83-1121 in the Court of Appeals for the Third Circuit. The issue of subject matter jurisdiction addressed in the opinion entered in appeal No. 83-1121 is applicable to all three appeals from the underlying action in the District Court (*see infra* note 5) and is the subject of the dissent in each of those appeals. This Petition, which is addressed to all three appeals below, raises only the issue of subject matter jurisdiction common to all three appeals as the basis of the request for the issuance of a Writ of Certiorari.

2. The Sansom Committee had raised a few other claims under NEPA and NHA, but these and the complaint's pendent claims were dismissed. [A-4]; *The Sansom Committee v. Lynn*, 366 F.Supp. 1271 (E.D. Pa. 1973). The pertinent sections of NEPA and NHA relating to the claims set forth in the text above appear in the Appendix hereto. [A-52 to A-60].

At the time the complaint was filed, the petitioner here, The Trustees of the University of Pennsylvania ("the University"), was the redeveloper for all properties on the block under a 1966 agreement with the RDA. The University, however, was not named as a defendant, and it was never alleged that the University had, or indeed could have, violated any of the requirements of the federal statutes pursuant to which the case was brought. RDA and HUD tried to take advantage of this omission by moving to dismiss the complaint on the grounds that the University was an indispensable party. The District Court denied this motion. [A-4]; 366 F. Supp. at 1280-81. The University, believing its interests to be affected, then sought twice to intervene in the case. These motions were also denied. [A-4 and A-27 n.5].

In December of 1980, the case was "settled" by means of a Consent Decree. That Decree made clear that the University — as to which no federal claim was or could have been asserted — was not a party to the litigation but was a party to the settlement.[3] [A-27 (Garth, J., dissenting)]. In fact, by the time of the settlement, the presence of any federal claim as to any party was doubtful inasmuch as the parties had agreed in 1976 not to demolish the block and the required environmental impact statement had issued. [*See* A-20 n.6 (Becker, J. concurring)]. In any event, it is undisputed that there was no diversity or federal question jurisdiction over any claim against the University at the time of the original settlement. [A-27 (Garth, J. dissenting)]. The Consent Decree, however, provided for ongoing federal court jurisdiction to enforce its terms. [A-13 (Becker, J. concurring)]. The University thus entered into a contract with the Sansom Committee and consented for purposes of the apparent settlement to ongoing federal court jurisdiction over that contract.

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3. Although signed by RDA and approved by HUD, the Decree was essentially a contract between the Sansom Committee and the University, who agreed to assign some of its redevelopment rights under specified conditions to the Sansom Committee by nominating some of its members as sub-redevelopers. [A-4]. As the Court of Appeals recognized, the matters involved in this Consent Decree are issues of state law. [A-6, A-11, A-18]. They are also unrelated to any federal interest. [A-18 (Becker, J. concurring)].

The importance of this provision became clear in 1982 when the Sansom Committee filed a motion to enforce the Consent Decree, contending that the University was failing to abide by its terms. During a hearing in the District Court, the Sansom Committee and the University agreed to modify substantially their previous agreement and a second Consent Decree was entered.[4] [A-4 and A-5]. Whereas the earlier agreement had been relatively limited in scope, the new Decree was an unusually detailed document, as Judge Becker recognized in his concurring opinion below:

> It is difficult to convey adequately the extent of the detail that is encompassed by the 1982 consent decree. The decree is several hundred pages long and sets out precise specifications for everything from the type of stone and wood that can be used in rehabilitating the houses to specifications for such concerns as "acceptable letter styles" on signs, etc., acceptable forms of "flags and banners," and methods of vermin control and refuse disposal. In addition, the agreement contains several 3 feet by 2 feet architect's plats, and literally dozens of blue prints for every possible structural detail of the houses, including, for example, the basement entrance, the roof deck and railing, the second story deck, the "light court stair," the "raised garden" and the front door (including the precise size and location of the postal numbers on the door). All this detail is fertile ground for future litigation between the parties and between the members of the Sansom Committee.

[A-16 n.4].

Within months this new agreement also collapsed when six Sansom Committee redevelopers (most of whom were University faculty) "withdrew" and new redevelopers (who were not University faculty) were named to replace them on the block. [A-5]. The University then moved to enforce the Consent De-

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4. The Sansom Committee and the University signed the 1982 Consent Decree, with RDA merely indicating its approval. HUD was not even a signatory on an "approval" basis. [A-5].

cree against the Sansom Committee. After a few months of discovery, the District Court denied this motion. [A-5]. On the same day the University's motion was denied, the District Court issued its own *sua sponte* modification of the Decree's terms, which modification was detrimental to the University's interests and was issued without any notice to the University. [Appeal No. 83-1120, *see* opinion at A-35]. Thereafter, the District Court issued yet another order modifying the terms of the Consent Decree pending appeal from its earlier orders. [Appeal No. 83-1253, *see* opinion at A-39]. The University appealed from all three orders.[5]

On appeal, the University raised, as it had done in the District Court prior to the entry of the third order involved in the appeals,[6] the issue of the court's lack of subject matter jurisdiction in the absence of a claim involving a federal question or of diversity of citizenship between the Sansom Committee and the University.[7] The Court of Appeals responded with three separate opinions. The majority rejected the University's position,

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5. The University filed appeals Nos. 83-1120 and 83-1121 on February 16, 1983 and No. 83-1253 on April 8, 1983.

6. The University never challenged the District Court's jurisdiction, to which it had concededly consented, until after that Court's *sua sponte* modification of the Decree. It then raised the issue in the District Court prior to the entry of that Court's second modification, which, unlike the first modification, was entered after notice and conference. The Court, however, declined to address the issue, which was pressed in all three of the University's appeals.

7. There is also no possibility of admiralty or maritime jurisdiction.

The grounds that do exist for jurisdiction where the claims do not involve federal questions and the parties are not diverse are not applicable in the instant case. Ancillary jurisdiction permits defending parties haled into federal court against their will to assert claims that otherwise have no federal jurisdictional base. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 376 (1978). Parties may also be joined by means of impleader or intervention of right, neither of which is applicable here. *Id.* at 375 n.18 and 376. Pendent jurisdiction permits the plaintiff to join non-federal claims with the federal ones against parties already properly before the court. *See Aldinger v. Howard*, 427 U.S. 1, 14 (1976). The question here is whether these jurisdictional doctrines extend beyond these well-established bases to create pendent *party* jurisdiction, the joinder not only of a non-federal question but of an additional and non-diverse party.

holding that the terms of the Consent Decree were sufficiently related to the original causes of action set forth in the complaint against the original defendants to be within the court's subject matter jurisdiction and thus the joinder of an additional party, the University, for settlement purposes raised no question of subject matter jurisdiction.

It is this issue of subject matter jurisdiction, decided adversely to the University, that is the subject of this Petition for a Writ of Certiorari. The decision below contravenes decisions of this Court and conflicts with decisions of other Courts of Appeals on this important issue involving the limits of federal court jurisdiction.

REASONS FOR GRANTING THE WRIT

I. The Decision Below is in Direct Conflict With Decisions of this Court Regarding the Limits of Federal Jurisdiction.

The Court of Appeals for the Third Circuit held that the addition of the University as "a party to the Consent Decree," thus making it subject to ongoing federal court jurisdiction, raises no issue of subject matter jurisdiction — whether or not there is a federal question or diversity of citizenship — so long as the terms of the Decree are related to the causes of action set forth in the complaint.[8] [A-8 and A-9]. This decision permits the assertion of federal jurisdiction by means of a consent decree over a party as to whom no ground for jurisdiction exists, other than its consent. As such, it cannot be reconciled with the decisions of this Court in *Aldinger v. Howard*, 427 U.S. 1 (1976) and *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).

8. Judge Seitz considers the issue to be the "jurisdictional limitations to what a district court may incorporate in a consent decree." [A-6]. Judge Becker in his concurring opinion agrees that the issue is the limitations on the scope of relief but states that "the question is not one of jurisdiction, but rather one of discretion and the scope of remedial power." [A-10 and A-15]. Judge Becker's statement is the more correct one if the issue were merely the extent of relief rather than the power to adjudicate and enter *any* relief. Relief beyond permissible limits constitutes an "error of decision" while lack of power to adjudicate renders the judgment void. *Swift & Co. v. United States*, 276 U.S. 311, 330 (1928).

Although the decision below avoids discussion of the issue, this Court's decisions make it clear that joinder of a party as to whom no independent basis of federal jurisdiction exists ("pendent party") does indeed raise a question of subject matter jurisdiction. *Aldinger v. Howard, supra.* In fact, the adjudication of non-federal questions between non-diverse parties already properly before the court raises a question of subject matter jurisdiction. *United Mine Workers v. Gibbs, supra.* The court below did not follow the standards set forth in those decisions for determining if subject matter jurisdiction exists over pendent claims and pendent parties. It ignored the question, preferring to view the case as one involving the permissible scope of a consent decree.

The fact that joinder of a new party in the present case took place at the time of the entry of the Consent Decree, rather than during the pleading stage, cannot change the jurisdictional result. The jurisdiction of the federal courts is equivalent to "their power to adjudicate." *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 167 (1939). It is beyond question that a consent judgment is an exercise of judicial power constituting an adjudication of the rights of the parties bound by it. *Pope v. United States*, 323 U.S. 1, 12 (1944); [A-23 and A-24 (Garth, J. dissenting)]. The question, therefore, is not whether there are limits to the scope of relief to be afforded, but rather whether there was power to adjudicate *any* disputes between the Sansom Committee and the University, a pendent party.

It follows that the reliance of the Court of Appeals on *Pacific Railroad v. Ketchum*, 101 U.S. 289 (1879), and similar cases, is unavailing because those cases deal with the scope of relief available under a consent decree in cases where the court had subject matter jurisdiction over the disputes between the parties to the decree at the time of its entry. Those cases manifestly do not support the proposition advanced below that a federal court has the power to enter a consent decree between a party and a pendent party so long as the terms of the decree are related to the causes of action set forth in the complaint. In fact, *Pacific Railroad*, in a separate discussion not cited below, specifically addressed the issue of the authority of the federal court

to enter any decree in that case. 101 U.S. at 297. Although the position of the *Pacific Railroad* parties in the pleadings did not support diversity jurisdiction, this Court held that the lower court had the power to ascertain the real dispute and rearrange the parties accordingly. When the lower court had exercised that power, there was complete diversity and jurisdiction thus existed. *Id.* at 298-99. As this Court specifically stated in *Pacific Railroad*:

> For the purposes of this appeal we need not inquire when the Circuit Court first got jurisdiction of this suit. It is sufficient if it had jurisdiction when the decree appealed from was rendered.

Id. at 298. In contrast, in the present case the District Court did not have jurisdiction over any dispute between the University and the Sansom Committee when it entered either of the consent decrees. The Court of Appeals for the Third Circuit, which relied almost entirely on *Pacific Railroad*, simply refused to comment on this fundamental difference in the cases.

If a federal court lacks jurisdiction over a dispute, it lacks jurisdiction to enter a settlement of that dispute as a consent judgment. The standards for determining whether jurisdiction over a dispute exists are the same at the time of entry of a consent decree as at the time of pleading. To hold otherwise conflicts with, and permits circumvention of, the requirements set forth in this Court's pendent party decisions in both federal question and diversity cases. *Aldinger*, *supra.*; *Owen Equipment & Erection Co. v. Kroger*, *supra.* It will be recalled that this Court refused in *Kroger* to permit parties to manipulate federal court procedures and create subject matter jurisdiction by suing only diverse defendants and waiting for them to implead the nondiverse defendants. The present case is similar. In effect, the lower court's decision permits parties to create subject matter jurisdiction by manipulation or consent provided only that they never formally file a pendent claim but wait to offer a contract resolving that claim to the federal court for entry as a consent decree.

If the court below had followed this Court's decision in *Aldinger*, it would have had to determine initially whether Congress has expressly or by implication negated pendent party jurisdiction over the University. 427 U.S. at 16-17. In doing so the court would have had to construe the reach of the jurisdictional statute, 28 U.S.C. §1331,[9] "in light of the scope of the cause of action as to which federal judicial power *has* been extended by Congress." 427 U.S. at 17. Not only did the Court of Appeals fail to make any such determination, but an analysis under the *Aldinger* standards would have inevitably led to the conclusion that neither the National Environmental Policy Act nor the National Housing Act carry with them a cause of action against the University. Those statutes include standards and requirements for certain governmental agencies to follow. Congress never in any way made them applicable to non-governmental entities. Because Congress never intended to make a non-governmental entity such as the University subject to an action brought under these acts, subject matter jurisdiction over any non-federal questions involving the University does not exist. [*See also* A-32 (Garth, J. dissenting)].

Even if it were found that Congress did not expressly or implicitly negate pendent party jurisdiction in the applicable statutes, federal court jurisdiction still has Constitutional limits. This Court in *Aldinger* did not reach the question whether Article III permits pendent party jurisdiction. But it is clear that the Article III requirements for pendent *party* jurisdiction can be no less stringent than the Article III requirements for jurisdiction over pendent *claims* as set forth in *Gibbs*. Therefore, the federal and non-federal disputes must derive from a "common nucleus of operative fact . . . such that [a plaintiff] would ordinarily be expected to try them all in one judicial proceeding." *Gibbs*, 383 U.S. at 725. Only if the *Gibbs* test is satisfied do the federal and non-federal claims comprise "but one constitutional 'case' ". *Id*. The Court of Appeals for the Third Circuit did not apply this test but a far broader one: whether the terms of the

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9. It is readily apparent that 28 U.S.C. §1361 affords absolutely no basis for joinder of the University as a pendent party.

consent decree resolving the dispute between the Sansom Committee and the University come "within the general scope of the case made by the pleadings." [A-7, quoting *Pacific Railroad*].

Even if the present case did pass the statutory analysis test of *Aldinger*, it is evident that the federal and non-federal questions do not share a common nucleus of operative fact under the *Gibbs* standard, but instead are at most related sequentially. *See Bernstein v. Lind-Waldock & Co.*, No. 83-2420 (7th Cir. June 18, 1984). Redevelopment and ownership rights simply do not spring from the same nucleus of fact as the federal causes of action, namely the failure of governmental agencies to follow designated procedures including development and issuance of an environmental impact statement and citizen participation in the formulation of a redevelopment plan. Indeed, one assumes this was the very basis of the lower court's earlier decisions finding that the University was not an indispensable party and refusing to permit the University to intervene as a party in the case.

To permit this decision to stand will undermine the jurisdictional limits and standards set forth in *Aldinger*, *Kroger* and *Gibbs*. Parties, by manipulation or consent, will be able to accomplish at the time of judgment what they could not accomplish at an earlier stage of the proceeding. This Court should grant this Petition for a Writ of Certiorari to resolve the conflict with its decisions and curb this unwarranted expansion of federal jurisdiction.

II. The Decision Below Conflicts With Decisions of Other Courts of Appeals as to Whether Article III of the Constitution Permits Pendent Party Jurisdiction.

The decision below finds that the federal district court had jurisdiction over a dispute involving a pendent party. Even if the Court of Appeals for the Third Circuit had found jurisdiction under the standards set forth by this Court in *Aldinger* and *Gibbs* (which it did not attempt to do), its decision would still

conflict with those of other courts of appeals on the issue whether Article III permits pendent party jurisdiction.

Aldinger rested its decision of no federal jurisdiction over the pendent party on a statutory analysis. Thus, this Court did not reach the question whether the *Gibbs* standard relating to pendent claims is also sufficient for determining whether a pendent claim involving a pendent party falls within the jurisdictional grant of Article III. The decisions in the courts of appeals on this constitutional issue are not uniform.

Directly contrary to the decision below are the decisions of the Court of Appeals for the Ninth Circuit. That Court has consistently held that federal courts have no judicial power under Article III of the Constitution to join pendent parties absent an independent basis of federal jurisdiction. *Safeco Insurance Co. of America v. Guyton*, 692 F.2d 551 (9th Cir. 1982) (no jurisdiction over pendent parties joined as third party defendants to defendants' counterclaim); *Benson v. United States Small Business Administration*, 644 F.2d 1366 (9th Cir. 1981) (no pendent party jurisdiction over non-federal defendant); *Ayala v. United States*, 550 F.2d 1196 (9th Cir. 1977), *cert. dismissed*, 435 U.S. 982 (1978) (no power under Article III to exercise jurisdiction over a pendent party in an action brought against the United States under the Federal Tort Claims Act).

To like effect are the decisions of the Court of Appeals for the Seventh Circuit, which has endorsed its pre-*Aldinger* decisions that federal courts have no pendent party jurisdiction in federal question and diversity cases. Thus, in a diversity case, *Hixon v. Sherwin-Williams Co.*, 671 F.2d 1005 (7th Cir. 1982), that Court stated that "our re-examination persuades us that *Hampton* [holding that jurisdiction was lacking over state claims involving non-diverse parties in a federal question case] was decided correctly." *Hixon*, 671 F.2d at 1008, *citing Hampton v. City of Chicago*, 484 F.2d 602 (7th Cir. 1973), *cert. denied*, 415 U.S. 917 (1974) and *Wojtas v. Village of Niles*, 334 F.2d 797 (7th Cir. 1964), *cert. denied*, 379 U.S. 964 (1965) (also finding a want of jurisdiction over state law claims between non-diverse parties); *see also Padilla v. d'Avis*, 580 F. Supp. 403, 410 (N.D. Ill.

1984); *Lincoln Manufacturing Co. v. Stern*, 515 F. Supp. 21 (N.D. Ill. 1981).[10]

In post-*Gibbs* but pre-*Aldinger* and pre-*Kroger* actions, the Court of Appeals for the Fourth Circuit refused to permit pendent party jurisdiction in diversity cases. *Parker v. W.W. Moore & Sons, Inc.*, 528 F.2d 764 (4th Cir. 1975); *Kenrose Manufacturing Co. v. Fred Whitaker Co.*, 512 F.2d 890 (4th Cir. 1972). On the basis of these decisions, a recent district court decision in a federal question case, although finding that Congress had not negated pendent party jurisdiction, dismissed the claim against the pendent party finding that the Fourth Circuit "inclines" toward the view of the Ninth Circuit regarding pendent party jurisdiction. *Butcher v. Robertshaw Controls Co.*, 550 F. Supp. 692 (D. Md. 1981).

Other courts of appeals have held, however, that the addition of a pendent party as well as a pendent claim does not change the standard for determining whether a "case" in the constitutional sense exists. *Federal Deposit Insurance Corp. v. Otero*, 598 F.2d 627, 631 (1st Cir. 1979). Under this theory, the standards set forth in *Gibbs* apply for determining whether Article III permits pendent party jurisdiction in the factual context before the court. *Id.*; *Lykins v. Pointer, Inc.*, 725 F.2d 645 (11th Cir. 1984); *Stewart v. United States*, 716 F.2d 755 (10th Cir. 1982).[11]

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10. A more recent decision of the Court of Appeals for the Seventh Circuit discusses pendent party jurisdiction generally. While noting that pendent party defendant jurisdiction survives in the admiralty field, the court mentions that this Court's decisions have left open the question whether "the pendent party concept retains any vitality today." Because the claims did not meet the *Gibbs* standard, the court did not render any decision regarding the reach of federal court jurisdiction over pendent parties. *Bernstein v. Lind-Waldock & Co.*, *supra*.

11. The inconsistencies among the courts of appeals are starkly apparent in cases deciding whether a federal court can exercise jurisdiction over claims against pendent parties in actions brought under the Federal Tort Claims Act over which federal court jurisdiction is exclusive. *Lykins* and *Stewart* have permitted pendent party jurisdiction. Other courts have reached the opposite conclusion. *Kack v. United States*, 570 F.2d 754 (8th Cir. 1978); *Ayala v. United States*, *supra*.

Because *Aldinger* addressed only statutory considerations, uniformity is lacking in the decisions of the courts of appeals on the constitutionality of pendent party jurisdiction.[12] While the Courts of Appeals for the Fourth, Seventh and Ninth Circuits have either expressly stated, or inclined toward, the view that pendent party jurisdiction is beyond the scope of Article III, the Courts of Appeals for the First, Tenth and Eleventh Circuits have exercised pendent party jurisdiction applying the "constitutional test" used for pendent claims in *Gibbs*.

In its decision below, the Court of Appeals for the Third Circuit goes beyond *Gibbs*, finding joinder of a pendent party to be permissible so long as the subject matter involving that party comes "within the general scope of the case made by the pleadings" involving the other parties. After extensive research, petitioner believes that it is correct to say that no United States court has ever voiced so expansive an interpretation of its jurisdictional authority over a pendent party.

This Court should grant this Petition for a Writ of Certiorari to resolve the conflict and achieve uniformity among the courts of appeals on the issue of pendent party jurisdiction.

III. The Question Raised in this Petition is One of Exceptional Importance: the Improvident Expansion of Federal Jurisdiction.

Federal courts are courts of limited jurisdiction. The maximum extent of a federal court's power to adjudicate disputes is set forth in Article III of the United States Constitution. Parties cannot by consent or conduct confer subject matter jurisdiction

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12. There is also confusion concerning the application of *Aldinger's* statutory analysis rule outside the context of §§1343(3) and 1983, to which *Aldinger* is limited. Some courts include only the jurisdictional statute in their analysis, *Boudreaux v. Puckett*, 611 F.2d 1028, 1031 (5th Cir. 1980); *Lykins*, 725 F.2d at 648-49, while others include both the jurisdictional statute and the statute on which the claim is based, finding that the *Aldinger* rule concerning the scope of the cause of action would otherwise be meaningless, *Charles D. Bonanno Linen Service, Inc. v. McCarthy*, 708 F.2d 1, 8 (1st Cir.), *cert. denied*, 104 S. Ct. 346 (1983). Thus a need also exists to unify these discordant views regarding the application of the *Aldinger* rule.

on a federal court unless Article III encompasses and Congress confers such jurisdiction. *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

This Court has mandated that this limited jurisdiction of the federal courts must be "carefully guarded against expansion by judicial interpretation or by prior action or consent of the parties." *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 17-18 (1951). The limits, "whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Kroger*, 437 U.S. at 374. The court below both disregards these limits and permits parties to evade them. This wrongful extension of federal jurisdiction warrants this Court's supervisory intervention.

As Judge Becker in his concurring opinion forthrightly realized, "this case demonstrates the potential for federal court involvement in matters that should be relegated to state courts." [A-10]. By its decision the Court of Appeals for the Third Circuit has permitted the district court wide discretion resulting in the exercise of jurisdiction over a pendent party after the dissipation of the federal interest. [A-16 (Becker, J. concurring)]. The decision has also sanctioned the ongoing supervision by a federal court of a legion of non-federal issues (between non-diverse parties) that bear no relationship to any conceivable federal interest. [A-18 and A-19 (Becker, J. concurring)]. Indeed, the issues dividing the parties relate solely to real property questions involving a single block in West Philadelphia. Such unauthorized and unwarranted involvement in state law matters not only infringes on the territory of the states but "reduces the ability of the federal courts to grant prompt and full relief in other cases" [A-18, (Becker, J. concurring)] where their expertise is needed to interpret federal law.

This Court has realized that pendent party jurisdiction is a "subtle and complex question with far-reaching implications," *Aldinger*, 427 U.S. at 2, *quoting Moor v. County of Alameda*, 411 U.S. 693, 715 (1973). The granting of a Writ of Certiorari is necessary, therefore, in order to curb the "far-reaching implications" of the decision below and guard the constitutional and statutory limits of federal jurisdiction in order that the federal

courts do not act in the absence of constitutionally-sanctioned judicial power.

If a federal court lacks jurisdiction over a dispute, it lacks jurisdiction to enter a settlement of that dispute as a federal court decree. Because district courts are often presented with consent decrees, this Court should make it clear that the limits of federal jurisdiction apply to the entry of a settlement decree as well as to one not the product of the parties' consent.

To allow the decision below to stand will provide a mechanism by which parties can, by manipulation or consent, confer jurisdiction upon a federal court at the time of judgment, thereby circumventing the established limits of federal jurisdiction. It is the obligation of this Court to refuse to permit this "wrongful extension of federal jurisdiction." *American Fire & Casualty Co. v. Finn*, 341 U.S. at 17-18.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgments and opinions of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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